

ATTACHMENT

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THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES A. BIGELOW,

Plaintiff,

vs.

NORTHWEST TRUSTEE SERVICES,
INC.;

GREEN TREE SERVICING, LLC.,

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, Inc.,

DOE DEFENDANTS 1 - 20

Defendants.

Case No.: 3:14-cv-05798-BHS

CONFIDENTIALITY AGREEMENT

The parties to this Confidentiality Agreement have agreed to the terms of this Agreement:

1. **Scope.** All materials produced or adduced in the course of discovery, including initial disclosures, responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively "documents") shall be subject to this Agreement concerning Confidential Information as defined below. This

1 Agreement is subject to the Local Rules of this District and the Federal Rules of Civil
2 Procedure on matters of procedure and calculation of time periods.

- 3 2. **Confidential Information.** As used in this Agreement, "Confidential Information"
4 means information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE
5 ORDER" by the producing party that falls within one or more of the following categories:
6 (a) information prohibited from disclosure by state; (b) information that reveals trade
7 secrets; (c) research, technical, commercial or financial information that the party has
8 maintained as confidential; (d) medical information concerning any individual; (e)
9 personal identity information such as credit card numbers or Social Security numbers; (f)
10 non-public income tax returns (including attached schedules and forms), W-2 forms and
11 1099 forms; or (g) personnel or employment records of a person who is not a party to this
12 case. Information or documents that are available to the public may not be designated as
13 Confidential Information.
14

15 3. **Designation.**

- 16 (A) A party may designate a document as Confidential Information for protection under
17 this Agreement by placing or affixing the words "CONFIDENTIAL – SUBJECT TO
18 PROTECTIVE ORDER" on the document and on all copies in a manner that will not
19 interfere with the legibility of the document. As used in this Agreement, "copies"
20 includes electronic images, duplicates, extracts, summaries or descriptions that
21 contain the Confidential Information. The marking "CONFIDENTIAL – SUBJECT
22 TO PROTECTIVE ORDER" shall be applied prior to or at the time the documents
23 are produced or disclosed. Applying the marking "CONFIDENTIAL – SUBJECT
24 TO PROTECTIVE ORDER" to a document does not mean that the document has any
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1 status or protection by statute or otherwise except to the extent and for the purposes
2 of this Agreement. Any copies that are made of any document marked
3 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall also be so
4 marked, except that indices, electronic databases, lists, or documents that do not
5 contain substantial portions or images of the text of marked documents and do not
6 otherwise disclose the substance of the Confidential Information are not required to
7 be marked.
8

9 (B) The designation of a document as Confidential Information is a certification by an
10 attorney or a party appearing *pro se* that the document contains Confidential
11 Information as defined in this Agreement.¹

12 4. **Depositions.** Deposition testimony is protected by this Agreement only if designated as
13 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” on the record at the time
14 the testimony is taken. Such designation shall be specific as to the portions that contain
15 Confidential Information. Deposition testimony so designated shall be treated as
16 Confidential Information protected by this Agreement until fourteen days after delivery of
17 the transcript by the court reporter to any party or the witness. Within fourteen days after
18 delivery of the transcript, a designating party may serve a Notice of Designation to all
19 parties of record identifying the specific portions of the transcript that are designated
20 Confidential Information, and thereafter those portions identified in the Notice of
21 Designation shall be protected under the terms of this Agreement. The failure to serve a
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24 ¹ An attorney who reviews the documents and designates them as “CONFIDENTIAL - SUBJECT TO
25 PROTECTIVE ORDER” must be admitted to the Bar of at least one state but need not be admitted to practice in
the District of Western Washington unless the lawyer is appearing generally in the case on behalf of a party. By
designating documents confidential pursuant to this Agreement, counsel submits to the jurisdiction and sanctions
of this Court on the subject matter of the designation.

1
2 timely Notice of Designation waives any designation of deposition testimony as
3 Confidential Information that was made on the record of the deposition, unless otherwise
4 ordered by the Court.
5

6 **5. Protection of Confidential Material.**

7 **(A) General Provisions.** Confidential Information shall not be used or disclosed by the
8 parties, counsel for the parties or any other persons identified in subparagraph B for
9 any purpose whatsoever other than in this litigation, including any appeal thereof. In a
10 putative class action, Confidential Information may be disclosed only to the named
11 plaintiff(s) and not to any other member of the putative class unless and until a class
12 including the putative member has been certified.

13 **(B) Limited Third-Party Disclosures.** The parties and counsel for the parties shall not
14 disclose or permit the disclosure of any Confidential Information to any third person
15 or entity except as set forth in subparagraphs (1)-(9). Subject to these requirements,
16 the following categories of persons may be allowed to review Confidential
17 Information:
18

19 **(1) Counsel.** Counsel for the parties and employees of counsel who have
20 responsibility for the action;

21 **(2) Parties.** Individual parties and employees of a party but only to the extent counsel
22 determines in good faith that the employee's assistance is reasonably necessary to
23 the conduct of the litigation in which the information is disclosed;

24 **(3) The Court and its personnel;**
25

1 (4) **Court Reporters and Recorders.** Court reporters and recorders engaged for
2 depositions;

3 (5) **Contractors.** Those persons specifically engaged for the limited purpose of
4 making copies of documents or organizing or processing documents, including
5 outside vendors hired to process electronically stored documents;

6 (6) **Consultants and Experts.** Consultants, investigators, or experts employed by the
7 parties or counsel for the parties to assist in the preparation and trial of this action
8 but only after such persons have completed the certification contained in
9 Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;

10 (7) **Witnesses at Depositions.** During their depositions, witnesses in this action to
11 whom disclosure is reasonably necessary. Witnesses shall not retain a copy of
12 documents containing Confidential Information, except witnesses may receive a
13 copy of all exhibits marked at their depositions in connection with review of the
14 transcripts. Pages of transcribed deposition testimony or exhibits to depositions
15 that are designated as Confidential Information pursuant to the process set out in
16 this Agreement must be separately bound by the court reporter and may not be
17 disclosed to anyone except as permitted under this Agreement.

18 (8) **Author or recipient.** The author or recipient of the document (not including
19 person who received the document in the course of litigation); and

20 (9) **Others by Consent.** Other persons only by written consent of the producing party
21 or upon order of the Court and on such conditions as may be agreed or ordered.

22 (C) **Control of Documents.** Counsel for the parties shall make reasonable efforts to
23 prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel
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1 shall maintain the originals of the forms signed by persons acknowledging their
2 obligations under this Agreement for a period of 63 days after the termination of the
3 case.
4

5 6. **Inadvertent Failure to Designate.** An inadvertent failure to designate a document as
6 Confidential Information does not, standing alone, waive the right to so designate the
7 document; provided, however, that a failure to serve a timely Notice of Designation of
8 deposition testimony as required by this Agreement, even if inadvertent, waives any
9 protection for deposition testimony. If a party designates a document as Confidential
10 Information after it was initially produced, the receiving party, on notification of the
11 designation, must make a reasonable effort to assure that the document is treated in
12 accordance with the provisions of this Agreement. No party shall be found to have
13 violated this Agreement for failing to maintain the confidentiality of material during a
14 time when that material has not been designated Confidential Information, even where the
15 failure to so designate was inadvertent and where the material is subsequently designated
16 Confidential Information.
17

18 7. **Filing of Confidential Information.** This Agreement does not, by itself, authorize the
19 filing of any document under seal. Any party wishing to file a document designated as
20 Confidential Information in connection with a motion, brief or other submission to the
21 Court must comply with the Local Rules.

22 8. **No Greater Protection of Specific Documents.** Except on privilege grounds not
23 addressed by this Agreement, no party may withhold information from discovery on the
24 ground that it requires protection greater than that afforded by this Agreement unless the
25 party moves for an order providing such special protection.

1 9. **Challenges by a Party to Designation as Confidential Information.** The designation of
2 any material or documents as Confidential Information is subject to challenge by any
3 party. The following procedure shall apply to any such challenge.
4

5 (A) **Meet and Confer.** A party challenging the designation of Confidential Information
6 must do so in good faith and must begin the process by conferring directly with
7 counsel for the designating party. In conferring, the challenging party must explain
8 the basis for its belief that the confidentiality designation was not proper and must
9 give the designating party an opportunity to review the designated material, to
10 reconsider the designation, and, if no change in designation is offered, to explain the
11 basis for the designation. The designating party must respond to the challenge within
12 seven (7) business days.

13 (B) **Judicial Intervention.** A party that elects to challenge a confidentiality designation
14 may file and serve a motion that identifies the challenged material and sets forth in
15 detail the basis for the challenge. Each such motion must be accompanied by a
16 competent declaration that affirms that the movant has complied with the meet and
17 confer requirements of this procedure. Until the Court rules on the challenge, all
18 parties shall continue to treat the materials as Confidential Information under the terms
19 of this Agreement.
20

21 10. **Action by the Court.** Applications to the Court for an order relating to materials or
22 documents designated Confidential Information shall be by motion. Nothing in this
23 Agreement or any action or agreement of a party under this Agreement limits the Court's
24 power to make orders concerning the disclosure of documents produced in discovery or at
25 trial.

1 **11. Use of Confidential Documents or Information at Trial.** Nothing in this Agreement
2 shall be construed to affect the use of any document, material, or information at any trial
3 or hearing. A party that intends to present or that anticipates that another party may
4 present Confidential Information at a hearing or trial shall bring that issue to the Court's
5 and parties' attention by motion or in a pretrial memorandum without disclosing the
6 Confidential Information. The Court may thereafter make such orders as are necessary to
7 govern the use of such documents or information at trial.
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9 **12. Confidential Information Subpoenaed or Ordered Produced in Other Litigation.**

10 (A) If a receiving party is served with a subpoena or an order issued in other litigation that
11 would compel disclosure of any material or document designated in this action as
12 Confidential Information, the receiving party must so notify the designating party, in
13 writing, immediately and in no event more than three court days after receiving the
14 subpoena or order. Such notification must include a copy of the subpoena or court
15 order.
16

17 (B) The receiving party also must immediately inform in writing the party who caused the
18 subpoena or order to issue in the other litigation that some or all of the material
19 covered by the subpoena or order is the subject of this Agreement. In addition, the
20 receiving party must deliver a copy of this Agreement promptly to the party in the
21 other action that caused the subpoena to issue.
22

23 (C) The purpose of imposing these duties is to alert the interested persons to the existence
24 of this Agreement and to afford the designating party in this case an opportunity to try
25 to protect its Confidential Information in the court from which the subpoena or order
issued. The designating party shall bear the burden and the expense of seeking

1 protection in that court of its Confidential Information, and nothing in these provisions
2 should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court. The obligations set forth in this
4 paragraph remain in effect while the party has in its possession, custody or control
5 Confidential Information by the other party to this case.
6

7 **13. Challenges by Members of the Public to Sealing Orders.** A party or interested member
8 of the public has a right to challenge the sealing of particular documents that have been
9 filed under seal, and the party asserting confidentiality will have the burden of
10 demonstrating the propriety of filing under seal.

11 **14. Obligations on Conclusion of Litigation.**

12 (A) Unless otherwise agreed or ordered, this Agreement shall remain in force after
13 dismissal or entry of final judgment not subject to further appeal.

14 (B) Within sixty-three days after dismissal or entry of final judgment not subject to further
15 appeal, all Confidential Information and documents marked "CONFIDENTIAL –
16 SUBJECT TO PROTECTIVE ORDER" under this Agreement, including copies as
17 defined in ¶ 3 A, shall be returned to the producing party unless: (1) the document has
18 been offered into evidence or filed without restriction as to disclosure; (2) the parties
19 agree to destruction to the extent practicable in lieu of return; (3) the receiving party
20 shall destroy documents containing Confidential Information and certify the fact of
21 destruction, and that the receiving party shall not be required to locate, isolate and
22 return e-mails (including attachments to e-mails) that may include Confidential
23 Information, or Confidential information contained in deposition transcripts or drafts
24 or final expert reports; or, (4) as to documents bearing the notations, summations, or
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1 other mental impressions of the receiving party, that party elects to destroy the
2 documents and certifies to the producing party that it has done so. Notwithstanding
3 the above requirements to return or destroy documents, counsel may retain attorney
4 work product, including an index that refers or relates to designated Confidential
5 Information so long as that work product does not duplicate verbatim substantial
6 portions of Confidential Information, and one complete set of all documents filed with
7 the Court including those filed under seal. Any retained Confidential Information
8 shall continue to be protected under this Agreement. An attorney may use his or her
9 work product in subsequent litigation provided that its use does not disclose or use
10 Confidential Information.
11

12 **(C) Deletion of Documents Filed under Seal from ECF System.** Filings under seal
13 shall be deleted from the ECF system only upon order of the Court.
14

15 **15. Order Subject to Modification.** This Agreement shall be subject to modification by the
16 Court on its own initiative or on motion of a party or any other person with standing
17 concerning the subject matter.

18 **16. No Prior Judicial Determination.** This Agreement is entered based on the
19 representations and agreements of the parties and for the purpose of facilitating discovery.
20 Nothing herein shall be construed or presented as a judicial determination that any
21 document or material designated Confidential Information by counsel or the parties is
22 entitled to protection under Rule 25(c) of the Federal Rules of Civil Procedure or
23 otherwise until such time as the Court may rule on a specific document or issue.
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1 17. **Persons Bound.** This Agreement shall take effect when all parties have signed this
2 Agreement and shall be binding upon all counsel of record and their law firms, the parties,
3 and persons made subject to this Agreement by its terms.
4

5 **WE SO MOVE**
6 **and agree to abide by the**
7 **terms of this Agreement**

8 Signature _____

9 Printed Name: James A. Bigelow

10 Dated: _____

11 *Pro Se Plaintiff*
12
13
14

15 **WE SO MOVE**
16 **and agree to abide by the**
17 **terms of this Agreement**

18 Signature _____

19 Printed Name: Joseph H. Marshall

20 Dated: _____

21 *Counsel for Northwest Trustee Services, Inc.*
22
23
24
25

WE SO MOVE
and agree to abide by the
terms of this Agreement

Signature _____

Printed Name: Renee M. Parker

Dated: _____

Counsel for
Green Tree Servicing, LLC and
Mortgage Electronic Registration Systems,
Inc.